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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,496	09/27/2005	Joel Lang	4110-41	3381
23117	7590	10/05/2006	EXAMINER	
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			FULTON, CHRISTOPHER W	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 10/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/534,496

Applicant(s)

LANG ET AL.

Examiner

Christopher W. Fulton

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5/10/05
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 22 and 23 are objected to because of the following informalities: Claims 22 and 23 have double recitations to “a globule”, “a first liquid”, and “a second liquid”. Appropriate correction is required.

### ***Drawings***

2. The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d).

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Conn.

The device as claimed is disclosed by Conn with a transparent vessel 13 containing a globule 17 of a first liquid suspended in a medium comprising a second liquid 15 with the first and second liquids being of different densities (see column 4 lines 3-24) and on of the liquids being dyeable to make more visible (column 3 lines 65+).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 4-14, 17-19, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conn.

The device as claimed is disclosed by Conn as stated in the rejection recited above for claims 1-3 and 15, but lacks the specific combinations of types of materials organic or aqueous or the specific materials claimed such as methanol and polypropylene. The device of Conn discloses the old and well known use of different types of materials in spirit levels such as aqueous liquids, gases, oils, transparent plastics, as well as other specific combinations of materials to make the liquids non-immiscible with each other, non-freezing, and easily viewable. Therefore, it would have been obvious to one of

ordinary skill in the art at the time the invention was made to use various combinations of these old and well known materials to make a level that provides the obvious characteristics desired as claimed.

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Conn in view of H'Doubler.

The device as claimed is disclosed by Conn as stated in the rejection recited above for claims 1-3 and 15, but lacks the dye being fluorescent to enhance the visibility of the globule. H'Doubler teaches in column 5 lines 29-35 to use a fluorescent dye in a globule to enhance the visibility of the level. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a fluorescent dye in Conn as taught by H'Doubler to enhance the visibility of the level.

9. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Conn in view of Ssumer.

The device as claimed is disclosed by Conn as stated in the rejection recited above for claims 1-3 and 15, but lacks the internal walls of the vial being coated to enhance the flowability of the fluids in the vial. Ssumer teaches that it is desirable to decrease the friction between the fluid and the vial. It is old and well known to use coatings to reduce friction. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use coating on the inside walls of the vial of Conn as taught by Ssumer to reduce the friction of the fluid in the vial.

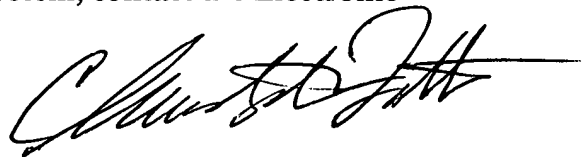
10. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Conn in view of MacDermott et al.

The device as claimed is disclosed by Conn as stated in the rejection recited above for claims 1-3 and 15, but lacks markings on the vial or body to aide in indicating the orientation of the globule. MacDermott et al teaches using multiple vial 26,28,30 levels in a housing 88 with calibrated markings 207,209 on each of the vials to indicate when the device is in the desired orientation with each vial being a transparent vessel 26,28,30 containing a globule 211 of a first liquid suspended in a medium comprising a second liquid. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use markings on the vial or body of Conn as taught by MacDermott to indicate when the device is in the desired orientation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher W. Fulton whose telephone number is (571) 272-22422242. The examiner can normally be reached on M-Th 5:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-22452245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher W. Fulton  
Primary Examiner  
Art Unit 2859

CWF